IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 949 OF 1985

1. Abdul Rahim Afzalsha Kazi,
   since deceased, by his heirs
   and legal representatives:
   i) Mahamudsha Abdul Rahim Kazi,
   ii) Smt.Khatunbai Shirajuddin
   Inamdar, since deceased,
   by her heirs and L.Rs.
   a) Sirojjoddin Balasaheb
   Pirjade (Inamdar),
   b) Mohommed Hanif Sirajoddin
   Pirjade (Inamdar),
   c) Sadiq Shirajoddin Pirjade,
   d) Tayyab Shirajoddin Pirjade,
   iii) Raziya Abdul Rahim Kazi,
   iv) Suraiya Mohomed Taher Patel,
   v) Taher Abdul Rahim Kazi;
2. Shamshuddin Afzalsha Kazi ... Petitioners

versus

1. Abbas Alamsha Kazi, since
   deceased, by his heirs and
   legal representatives :
   A) Jhebunnisa Abbas Kazi,
   since deceased, by her
   heirs and legal reps.
   i) Ajmuddin Abbas Kazi,
   ii) Allauddin Abbas Kazi,
   iii) Intaj Ismail Mulla,
   iv) Ainuddin Abbas Kazi,
   B) Ajmuddin Abbas Kazi,
   C) Imtaj Ismail Kazi,
   D) Allauddin Abbas Kazi,
   since deceased by his
   heirs and legal reps.:
   i) Smt.Faijunissa Allauddin
   Kazi,
   ii) Sou.Minaj Arif Pathan,
   iii) Sou.Shanenaj Riyaz Jamdar,
   iv) Kum.Gulnaj Allauddin Kazi,

v) Mikhtyar Allauddin Kazi,
vi) Taslin Allauddin Kazi,
vii) Azar Allauddin Kazi,
viii) Jahir Allauddin Kazi,

2. Shankar Sakharam Raut, since deceased by his heirs and legal representatives :
i) Laxmibai Shankarrao Raut,
ii) Smt.Banubai Shankarrao Raut, since deceased, through L.Rs. Nos. 2(iii) to 2(vii),
iii) Smt.Sonabai Vithal Wadkar since deceased, by her heirs and legal representatives :
a) Smt.Shakuntala Tukaram Dudhale,
b) Dattatraya Vithal Wadkar,
c) Smt.Kusum Mahadeo Sapkal,
d) Arvind Vithal Wadkar,
e) Kailas Vithal Wadkar,
f) Smt.Ranjana Rajaram Zagade,
iv) Smt.Shantabai Bhagwan Ladakat,
v) Narayan Shankar Raut, since deceased, by his heirs and legal representatives :
a) Smt.Shantabai Narayan Raut,
b) Mahadeo Narayan Raut,
c) Sou.Bindu Vitthal Bankar,
d) Sou.Sindhu Shrirang Dagade,
e) Sou.Alka Vasantrao Girme,
f) Sanjay Narayan Raut,
vi) Smt.Narmada Genba Newase,
vii) Smt.Chhabutai Dattoba Vaghole,

3. Nasiruddin Fakruddin Kazi, since deceased, by his heirs and legal representatives :
a) Smt.Sugarabi Nasruddin Kazi,
b) Smt.Tabssum Abdul Kazi,
c) Smt.Sharmila Harun Pathan,
d) Smt.Nilophar Liyakat Ali Kazi,
e) Fakiruddin Nasruddin Kazi,

4. Ataulla Abdul Rahim Kazi,
5. Deleted,
6. Jinubhai @ Sijanuddin Kutubuddin Kazi,
7. Hidayatulla Haidersha Kazi, since deceased, by his heir and L.R.
a) Ataulla Karim Kazi,
8. Deleted ... Respondents

...

Mr. Sugandhrao Deshmukh, for Mr. M.V. Sali, for the Petitioners.
Mr. R.G. Ketkar, Mr. R.M. Agarwal for the concerned Respondents.
Other Respondents served.

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CORAM : A.M.KHANWILKAR,J.

29th June 2004

ORAL JUDGMENT :

. This writ petition takes exception to the judgment and order passed by the Maharashtra Revenue Tribunal, Pune, dated December 3, 1984, in Revision No. MRT-NS-II-1/81 (TEN.B.37/1981). Present petition arises out of reference proceedings made by the Civil Court in the Civil Suit between the parties to this petition. Respondent filed Regular Civil Suit No. 77 of 1973 which was, in fact, instituted in the year 1968 against the Petitioners for declaration and appropriate relief. One of the declaration claimed in the said suit is that document dated 15th February 1957 is void and is not binding on the plaintiffs. The said document is stated to be effecting partition between the family members of the parties. Validity of the said document

was put in issue. In response, the Petitioners filed their written statement and asserted that the said document was not a partition deed, but a gift deed. Since the Petitioners claimed that the document in question was a gift deed, the next question that arose is whether the transfer by way of such a gift deed of agricultural land in favour of the Petitioners was permissible in view of the bar under section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Act") since there was nothing to show that the Petitioners were agriculturists on 15th February 1957. Since this became the contentious issue, the Civil Court made reference to the Mamlatdar on the following terms :

> "Do plaintiffs prove that document dated 15-2-1957 is void, defendants Nos. 1 and 2 were not agriculturists on that day ?"

2. Pursuant to the said reference made, both the parties appeared before the Tenancy Authority and adduced evidence in respect of their respective stand. The Tenancy Authority on

evaluating the evidence on record found as of fact that the evidence produced by the parties would not establish the position that the Petitioners were carrying on agricultural activities on 15th February 1957 or were owners of any agricultural land. Although the issue as referred by the Civil Court was loosely framed, the main aspect that was examined by the tenancy authority was whether the Petitioners were agriculturists on 15th February 1957. That issue has been answered against the Petitioners and the conclusion so reached by the Tenancy Authority is obviously a finding of fact on that issue. This finding of fact has been confirmed by the appellate authority in the appeal preferred by the Petitioners by judgment and order dated 21st October 1982. The matter was thereafter carried in revision before the Maharashtra Revenue Tribunal, which, in turn, dismissed the revision application by a detailed judgment and order dated December 3, 1984. The Tribunal has observed at the outset that the controversy raised on behalf of the Petitioners was beyond the scope of remedy of revision available under section 76 of the Act. Nonetheless, it proceeded

to analyse the entire evidence produced by the parties afresh and reached at the same conclusion, which was reached by the two authorities below on the issue as to whether the Petitioners were agriculturists on 15th February 1957. The aforesaid concurrent decisions are subject matter of challenge in the present writ petition.

3. The first grievance made before me is that the order of reference as made was untenable. It was next contended that from the pleadings on record, it would appear that the Petitioners are the members of a unit of the family consisting of the Petitioners and the Respondents, which is an undivided Muslim family and, if it is so, the issue ought to have been answered in favour of the Petitioners. This submission proceeds on the assumption that the Petitioners have share in the property owned by the Respondents, which was originally held by Mohommed Sha. Reliance is placed on the provisions of section 63 read with section 2(7)(a) of the Act to buttress the argument that in such a case, the Petitioners will have to be

held as agriculturists along with the Respondents. It was next contended that the Petitioners had relied upon documentary evidence, such as Khasra Extracts, Assessment Receipts, Sale Deed in respect of Plot No. 133C. Insofar as the sale deed of Plot No. 133C is concerned, it describes the land as Paradi land and going by the definition of Paradi land in section 2(26) of the Maharashtra Land Revenue Code, 1966, it will have to be held that the said land was agricultural land and on that basis the conclusion that the Petitioners were agriculturists was unacceptable. On the above arguments, learned Counsel has criticised the decisions rendered by the three authorities below, though concurrent.

4. On the other hand, Counsel for the Respondent plaintiffs has supported the view taken by the three authorities below and submits that no interference is warranted in exercise of writ jurisdiction. Learned Counsel has argued that arguments canvassed before this Court are devoid of merit and, in fact, the first two arguments were not specifically pressed into

service before the authorities below.

5. Having considered the rival submissions, I have no hesitation to take the view that the present petition is devoid of merits. The first contention canvassed before me that the reference was untenable, to my mind, cannot be countenanced. It is seen that the reference came to be made by the Civil Court in the light of the stand taken by the Petitioners before the Civil Court. It was their case that the document in question was a gift deed. If it was to be held as a gift deed, then the next question that would arise is, whether such a gift was permissible in view of the bar in section 63 of the Act, if the Petitioners were non-agriculturists. It is in that perspective that reference was made by the Civil Court to the Mamlatdar and the tenancy authorities have concurrently found as of fact that the Petitioners were not agriculturists as on 15-2-1957. Moreover, at no stage, the Petitioners have questioned the correctness of the reference order as passed by the Civil Court. The grievance that such order was untenable ought to have been made immediately after the order was

passed, whereas the Petitioners have participated in the tenancy proceedings all throughout. At this belated stage, it is not open for the Petitioners to make a grievance that the reference was not properly formulated, or, that it was unwarranted.

6. That takes me to the next argument seriously canvassed on behalf of the Petitioners that the Petitioners were members of the undivided Muslim family consisting of the Petitioners and the Respondents. This submission clearly overlooks the fact as is rightly brought to my notice and can be discerned from the record that the predecessor of the parties Nizamuddin had three sons, Alimuddin Shah, Ahmoddin Shah and Afzaluddin Shah. The Petitioners are claiming through the branch of Afzaluddin Shah, whereas the Respondents plaintiffs are claiming through the branch of Alimuddin Shah. It is seen that the Petitioners' predecessor, Afzaluddin Shah, died in 1920 much before his father Nizamuddin died in the year 1929. Similarly, Ahmoddin Shah also predeceased Nizamuddin. Ahmoddin Shah died in the year 1925. In view of the settled legal

position, in relation to the inheritance under the Muslim Law, the sole survivor Alimuddin Shah after the death of Nizamuddin in the year 1929 became absolute owner of the property in question. If it is so, it is not a case of undivided Muslim family as such. It is possible that the Petitioners were looking after the plaintiffs after the death of their father, but that does not mean that they were members of Muslim undivided family of Alimuddin Shah as such. Viewed in this perspective, the argument of the Petitioners on the assumption that they are members of Muslim undivided family for which reason, they should necessarily be held to be agriculturists as on 15-2-1957 does not hold good and the same deserves to be rejected.

7. The next argument seriously canvassed on behalf of the Petitioners was that the sale deed in relation to land Plot No. 133C described the said land as Paradi land and in view of the expansive provision of section 2(26) of the M.L.R. Code, such land will have to be held as agricultural land. This aspect has been carefully considered by the authorities below

including the Tribunal in the impugned judgment. The view so reached by the authorities below does not merit any interference. Besides, I find substance in the argument of Mr. Ketkar appearing for the Respondent that no assessment receipt has been produced to establish the fact that the said land was put to agricultural use as such prior to 1957. There is nothing on record to suggest that the land was actually put to agricultural use and in absence of such evidence, merely because of the description in the sale deed, it cannot be assumed that the Petitioners were engaged in agricultural activity prior to 15-2-1957.

8. Indeed, Mr. Deshmukh for the Petitioners made fervent attempt to persuade me that the view taken in relation to Khasra extracts, assessment receipt and other documentary evidence produced on behalf of the Petitioners is unacceptable. However, I find no substance in this submission, because the scope of remedy of revision was limited to interference only with regard to manifest errors committed by the authorities below. Notwithstanding that, the Tribunal has

proceeded to examine the entire evidence and evaluated the same to reach at an independent conclusion which is consistent with the view already taken by the two authorities below. Entertaining any argument on behalf of the Petitioners will virtually result in reappreciating the evidence, which has been done by the three authorities below. Merely because some other view is possible or some error here or there has been committed by the authorities below cannot be the basis for exercising writ jurisdiction. The remedy of writ jurisdiction is also limited. It is only when the authorities below have committed manifest error or error apparent on the face of the record, which has caused serious miscarriage of justice, interference will be warranted. Whereas in the present case, the argument is only of criticising the manner in which the matter has been analysed by the three authorities below. That by itself cannot be the basis for interfering with the concurrent findings of fact reached by the authorities below, which are otherwise sound and supported by the evidence on record. Hence, not a case for interference in exercise of writ

jurisdiction. Writ petition is, therefore, dismissed. No order as to costs. Rule is discharged.

. Certified copy expedited.

(A.M.KHANWILKAR,J.)